

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

JMD Companies LLC, a California
Limited Liability Company;
Bombay Chaat House, Inc., a
California Corporation

Defendant

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of JMD Companies LLC, a California Limited Liability Company; Bombay Chaat House, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant JMD Companies LLC owned the real property located at or about 454 S Main St, Milpitas, California, between May 2021 and August

1 2021.

2 3. Defendant JMD Companies LLC owns the real property located at or
3 about 454 S Main St, Milpitas, California, currently.

4 4. Defendant Bombay Chaat House, Inc. owned Bombay Chaat House
5 located at or about 454 S Main St, Milpitas, California, between May 2021 and
6 August 2021.

7 5. Defendant Bombay Chaat House, Inc. owns Bombay Chaat House
8 (“Restaurant”) located at or about 454 S Main St, Milpitas, California,
9 currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein is
15 responsible in some capacity for the events herein alleged, or is a necessary
16 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
17 the true names, capacities, connections, and responsibilities of the Defendants
18 are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California’s Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to the Restaurant in May 2021 and August 2021 (twice)
6 with the intention to avail himself of its goods or services motivated in part to
7 determine if the defendants comply with the disability access laws.

8 11. The Restaurant is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
11 to provide wheelchair accessible outside dining surfaces in conformance with
12 the ADA Standards as it relates to wheelchair users like the plaintiff.

13 13. The Restaurant provides dining surfaces to its customers but fails to
14 provide wheelchair accessible outside dining surfaces.

15 14. A problem that plaintiff encountered was there was insufficient toe and
16 knee clearance under the outside dining surfaces.

17 15. Plaintiff believes that there are other features of the dining surfaces that
18 likely fail to comply with the ADA Standards and seeks to have fully compliant
19 dining surfaces for wheelchair users.

20 16. On information and belief, the defendants currently fail to provide
21 wheelchair accessible dining surfaces.

22 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
23 to provide accessible entrance door hardware in conformance with the ADA
24 Standards as it relates to users like the plaintiff.

25 18. The Restaurant provides door hardware to its customers but fails to
26 provide accessible door hardware.

27 19. One problem that plaintiff encountered was that the entrance door
28 hardware had a pull bar style handle that required tight grasping to operate.

1 20. Plaintiff believes that there are other features of the door hardware that
2 likely fail to comply with the ADA Standards and seeks to have fully compliant
3 door hardware.

4 21. On information and belief, the defendants currently fail to provide
5 accessible door hardware.

6 22. The failure to provide accessible facilities created difficulty and
7 discomfort for the Plaintiff.

8 23. These barriers relate to and impact the plaintiff's disability. Plaintiff
9 personally encountered these barriers.

10 24. As a wheelchair user, the plaintiff benefits from and is entitled to use
11 wheelchair accessible facilities. By failing to provide accessible facilities, the
12 defendants denied the plaintiff full and equal access.

13 25. The defendants have failed to maintain in working and useable
14 conditions those features required to provide ready access to persons with
15 disabilities.

16 26. The barriers identified above are easily removed without much
17 difficulty or expense. They are the types of barriers identified by the
18 Department of Justice as presumably readily achievable to remove and, in fact,
19 these barriers are readily achievable to remove. Moreover, there are numerous
20 alternative accommodations that could be made to provide a greater level of
21 access if complete removal were not achievable.

22 27. Plaintiff will return to the Restaurant to avail himself of its goods or
23 services and to determine compliance with the disability access laws once it is
24 represented to him that the Restaurant and its facilities are accessible. Plaintiff
25 is currently deterred from doing so because of his knowledge of the existing
26 barriers and his uncertainty about the existence of yet other barriers on the
27 site. If the barriers are not removed, the plaintiff will face unlawful and
28 discriminatory barriers again.

28. Given the obvious and blatant nature of the barriers and violations alleged herein, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

29. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

30. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
2 defined by reference to the ADA Standards.

3 c. A failure to make alterations in such a manner that, to the
4 maximum extent feasible, the altered portions of the facility are
5 readily accessible to and usable by individuals with disabilities,
6 including individuals who use wheelchairs or to ensure that, to the
7 maximum extent feasible, the path of travel to the altered area and
8 the bathrooms, telephones, and drinking fountains serving the
9 altered area, are readily accessible to and usable by individuals
10 with disabilities. 42 U.S.C. § 12183(a)(2).

11 31. When a business provides dining surfaces, it must provide accessible
12 dining surfaces.

13 32. Here, accessible dining surfaces have not been provided in
14 conformance with the ADA Standards.

15 33. When a business provides door hardware, it must provide accessible
16 door hardware.

17 34. Here, accessible door hardware has not been provided in conformance
18 with the ADA Standards.

19 35. The Safe Harbor provisions of the 2010 Standards are not applicable
20 here because the conditions challenged in this lawsuit do not comply with the
21 1991 Standards.

22 36. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 37. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27
28 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**

1 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
2 Code § 51-53.)

3 38. Plaintiff repleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
6 that persons with disabilities are entitled to full and equal accommodations,
7 advantages, facilities, privileges, or services in all business establishment of
8 every kind whatsoever within the jurisdiction of the State of California. Cal.
9 Civ. Code §51(b).

10 39. The Unruh Act provides that a violation of the ADA is a violation of the
11 Unruh Act. Cal. Civ. Code, § 51(f).

12 40. Defendants’ acts and omissions, as herein alleged, have violated the
13 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
14 rights to full and equal use of the accommodations, advantages, facilities,
15 privileges, or services offered.

16 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
17 discomfort or embarrassment for the plaintiff, the defendants are also each
18 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
19 (c).)

20 42. Although the plaintiff encountered frustration and difficulty by facing
21 discriminatory barriers, even manifesting itself with minor and fleeting
22 physical symptoms, the plaintiff does not value this very modest physical
23 personal injury greater than the amount of the statutory damages.

24
25 **PRAYER:**

26 Wherefore, Plaintiff prays that this Court award damages and provide
27 relief as follows:
28

1 1. For injunctive relief, compelling Defendants to comply with the
2 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
3 plaintiff is not invoking section 55 of the California Civil Code and is not
4 seeking injunctive relief under the Disabled Persons Act at all.

5 2. For equitable nominal damages for violation of the ADA. See
6 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
7 and any other equitable relief the Court sees fit to grant.

8 3. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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13 Dated: October 20, 2021

CENTER FOR DISABILITY ACCESS

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16 By: _____



17 Amanda Seabock, Esq.
18 Attorney for plaintiff
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